

FCC MAIL SECTION

Before the

Federal Communications Commission
Washington, D.C. 20554

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DISPATCHED BY

MM Docket No. 93-42 ✓

In re Applications of

MOONBEAM, INC.
(hereafter "Moonbeam")

File No. BPH-911115MG

GARY E. WILLSON
(hereafter "Willson")

File No. BPH-911115MO

For Construction Permit for a
New FM Station on Channel 265A
in Calistoga, California

HEARING DESIGNATION ORDER

Adopted: February 23, 1993;

Released: March 8, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Moonbeam proposes to sidemount its antenna on the existing KFTY-TV tower and Willson proposes to build its tower adjacent to the existing KCDS(FM) and KLVR(FM) towers. An engineering review of the applications reveals that both Moonbeam and Willson did not sufficiently address the issue of potential occupational hazards caused by the proposed facilities. Pursuant to OST Bulletin No. 65, October 1985, entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," when persons have access to the site, the transmitter power must be reduced or completely eliminated in order to comply with FCC guidelines. In situations like Moonbeam's and Willson's, where there are multiple contributors to radiofrequency radiation, all stations are required to reduce power or cease operations as necessary to assure safety with respect to radiofrequency radiation with regard to persons having access to the site. Accordingly, any subsequent grant will be subject to the following condition:

The permittee/licensee in coordination with other users of the site must reduce power or cease operations as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines.

3. Moonbeam petitioned for leave to amend its application on November 3, 1992. The accompanying amendment was filed after March 2, 1992, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative

position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Section II, Item 6 of FCC Form 301 (June 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Moonbeam has not completed Item 6 correctly in that it gives "Shoot the Moon" as the residence address for Mary F. Constant and "Hyndman Lane" as the residence address for Pat Van Paepegghum. Accordingly, Moonbeam must submit an amendment which gives all the information required by Section II, Item 6 to the presiding Administrative Law Judge after this Order is released.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Moonbeam IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That Moonbeam shall submit an amendment which contains the information required by Section II, Item 6 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules,

within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau